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AND THE

**PENNSYLVANIA RAILROAD**

**CUARANTEE.**

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**“C. C. & I. C.”**

AND THE

**PENNSYLVANIA RAILROAD**

**GUARANTEE.**

*Reprinted from Hassler's Weekly Financial Report.*

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HASSLER'S  
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**RAILROAD SECURITIES.**



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20 Mr 15 M. J.

# THE GUARANTEE OF THE SINKING FUND.

[From Hassler's Financial Report, No. 216, Feb. 22, 1875.]

C. C. & I. C. —In continuation of our remarks in our last issue in regard to the provision for a sinking fund for the ultimate payment of the Bonds of this company, and the stipulations of the lease in relation thereto, we would now say:

The lease of the C. C. & I. C. by the P. C. & St. L., of which lease the Pennsylvania Railroad Company is "the guarantor," was made for the "full end and term of *ninety-nine* (99) years from and after the first day of February, Anno Domini one thousand eight hundred and sixty-nine" (page 5), and, after providing for the "payment of the interest that may accrue after" that date, "being at the rate of seven per cent. (7 per cent.) on all the mortgage Bonds of the party of the first part, to the extent of twenty millions of dollars (\$20,000,000), in accordance with their respective equities and priorities" (page 7), which is to be paid even if the 30 per cent. of gross receipts is not equal to the sum required for that purpose, further distinctly provides that "the party of the second part covenant and agree that *they* will provide an annual sinking fund, *as required of the said party of the first part by the terms and conditions of the said mortgages therefor*," all of which the Pennsylvania Railroad Company "does hereby guarantee" (page 11).

Now, that the Lessee should make provision for the sinking funds required by the terms of the mortgages under which the different Bonds were issued, became an absolute necessity from the fact that all the earnings of the road were to be taken by the said Lessee, and it is simply consonant with justice that the provisions of the lease which we have recited should have been entered into. Deprived itself of its resources, the C. C. & I. C. could not meet its obligations in regard to those sinking funds, and the P. C. & St. L. and "its guarantor"—the Pennsylvania Railroad Company—"covenant and agree" that they will comply with those requirements.

It was with these provisions of the lease, altogether unquestioned by any party whatsoever, that investors bought the

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Bonds of the C. C. & I. C. We have looked over our records, and from our official reports of sales at the Stock Exchange, and find, at random, the following reports of sales of the first mortgage Bonds:

1869—May 13, \$12,000; May 14, \$70,000; May 26, \$95,000; June 11, \$40,000; July 7, \$39,000; July 13, \$26,000; August 27, \$25,000; September 16, \$43,000; October 5, \$15,000; November 25, \$21,000; December 18, \$15,000. 1870—January 5, \$15,000; January 18, \$61,000. These figures—and they are but indicative of the many transactions in the Bonds—show that these bonds were largely bought at the time the guarantee of interest and sinking fund was undisputed. Is it necessary to ask the question. Would investors have purchased them if they had supposed that, having given up all the income of the road to the lessee and “its guarantor,” the C. C. & I. C. was responsible for the prompt payment of the interest due on them and the carrying out of the provisions for the establishing of a sinking fund for their ultimate redemption? Nay, verily, but they relied, *as they had the right to rely*, on the covenants and agreements of the P. C. & St. L. and the Pennsylvania Railroad Companies, to pay the interest and provide the sinking funds.

But this lease of 22d January, 1869, having been entered into by the P. C. & St. L. and the P. R. R. Cos. *because*, as the Report of the Pennsylvania Directors plainly stated, “the restless spirit of our rivals” “rendered it necessary” was not as much value to the lessee and the guarantor after the consummation of the lease, “dated June 7th, 1869,” of the Pittsburg, Fort Wayne and Chicago Railway—and the effect of that lease is seen in the fact that under date, nominally, of February 1, 1870, the three parties to the lease of 22d January, 1869, pretended to enter into an “Amended Lease and Contract”—*not* for the better protection of the parties having rights acquired under the lease previously agreed to but which in so many words endeavors to cancel and annul those rights, and in so far forth as far as possible by such “amendment” reduce the liability of the lessee and its “guarantor.” Let’s examine this, remembering the facts as to the covenants and agreements previously given.

We quote from the circular notice of President B. E. Smith:

“Office of the

COLUMBUS, CHICAGO AND INDIANA CENTRAL RY. CO.,  
Columbus, Ohio, Jan. 17, 1871.

*To the Stockholders and Bondholders of the Columbus, Chicago, and Indiana Central Railway Company:—*

The Lease and Contract between the C. C. & I. C., the P. C. & St. L. and the Pa. R. R. Co., “approved by the contracting parties, and duly executed, under which the Lessee had charge of and operated our road for one year from and after the first day of February, 1869, was modified on the first day of February, 1870, by the contracting parties.”



In order to a correct understanding of the so-called modifications we will quote:

“Agreements made this” 1 February, 1870. \* \* \* \* \*

Witnesseth, that for and in consideration of the covenants hereinafter contained, and of the benefits expected to result therefrom, the parties have agreed with each other:

*Article First.*—The party of the first part, agrees and undertakes to arrange, provide for, and so adjust and classify all their indebtedness now existing; that \$15,821,000 thereof shall be represented by bonds bearing seven (7) per cent. interest, secured by mortgage upon the estate and property of the said party of the first part, the \$821,000 being Columbus and Indianapolis Central Railway Company 2d Mortgage Bonds, and that all other indebtedness of said party, and all payments and advances heretofore made on or for interest, construction, operating and maintaining said road, accounts and expenditures, made by the second and third parties, or either, in excess of the receipts heretofore derived from the business and transportation on and over said road, shall be represented by bonds bearing seven (7) per cent. interest, entitling the holder to vote, secured by a mortgage upon all the estate and property of said company, which bonds shall be payable after twenty years, at the pleasure of the said first party, and shall be convertible into preferred capital stock, bearing seven (7) per cent. interest, at par, at any time within fifteen years at the option of the holders of the same, which issue of bonds shall not exceed ten millions of dollars, to be received by said second and third parties at par, in payment of their claims and advances so far as they are entitled, and may hereafter become entitled to the same.

Now the meaning of this clause is : The C. C. & I. C. Railroad Company *must compel* the owners of their Second Mortgage consolidated Bonds, dated 15th December, 1868. part of an issue of \$5,000,000, for another bond which should be part of an issue of \$10,000,000, “secured by mortgage,” indeed, but elsewhere referred to as “Income Bonds,” plainly showing that no regular interest was to be expected on *them*, as had been previously provided for and guaranteed by the lease of 22d January, 1869. Can it be that the Second Mortgage Bondholder was to be compelled to consider this as one “of the benefits expected to result” to him from the “amendment?”

“*Article Second.*—That hereafter the party of the second part covenants and agrees to pay and apply the thirty per cent., being the balance of the gross earnings of the railroad of the party of the first part, as follows: First—For the payment of the coupons as they shall from time to time mature upon the said bonds representing, and amounting to the aforesaid sum of fifteen millions eight hundred and twenty-one thousand dollars (\$15,821,000.) But if the same shall not be adequate to such payment in full in any one year, then the said party of the second part will pay any such deficiency out of its own proper moneys, without charge, reclamation or subergation therefor.”

This would seem to secure the interest on the \$15,821,000 under any circumstances, but the Second Mortgage Bondholder who has availed himself of "the option" of converting his bonds for an Income Bond is very kindly provided for by,

"Second.—Out of any surplus of said thirty per cent. remaining after payment of said interest to pay the same pro rata as interest or dividends, to and among the holders of the convertible bonds provided for in the first article of this agreement, based on the entire amount of the Income Bonds, convertible into preferred stock, as provided in the first article of this agreement *actually issued*, and the *bonds* which the holders have the *option* to convert into the said Income Bonds, and the holders of any stock into which any of said bonds may have been converted by the holder in the exercise of the option so to do, provided for in the bonds, and also, of any bonds hereafter to be issued under the provisions of a subsequent article of this agreement, to represent new constructions and additional equipment for the use of the railroad of the party of the first part.

It is scarcely necessary to ask if any Second Mortgage Bondholder availed himself of the "option." Suffice it to say that the Pennsylvania Railroad Company has not done so, and now holds the Second Mortgage Bonds which it acquired under one of the articles of the lease of January 22d, 1869. Why have they not made the exchange? Why have not the C. C. & I. C., which undertook to "arrange, provide for, and adjust" such cases, compelled the Pennsylvania Railroad Company to make the exchange? Bring this home to the contracting parties themselves and the absurdity of this proviso of the so-called "Amended Lease and Contract" is manifest; and when the writer of this signed his name to the report which said that the "Amended lease" contained obligations which it is "a legal and physical impossibility to carry out" he was not unmindful of this clause of the "Amendment." When the Pennsylvania Railroad Investigating Committee made their report a few months ago they found that that Company owned \$1,258,000 of these Second Mortgage Bonds and they valued them at 70, while they valued the \$3,504,000 of the "\$10,000,000 Loan, Income Bonds" at 50. Now, most assuredly, the Pennsylvania Railroad Company ought to be able to appreciate the "benefits expected to result" and made the exchange! But they did not, and no sane man ever would.

Now, as to the sinking funds, so amply provided for in the lease of 22d January, 1869, the so-called and pretended "amendment" qualifies and, in effect, for the present so far abolishes them that the "benefits expected to result" are only,

"Third.—To pay to a sinking fund to be established for the redemption of said mortgage bonds, the one-half of one per cent. provided for in the mortgages to secure the payment of said \$15,821,000 of bonds, for the use and benefit of the first party; and after such payments, any surplus of said thirty per cent. remaining, to be divided pro rata as a dividend upon the common stock of said party of the first part.



This reduces the absolute guarantee of sinking funds, according to the terms of the mortgages, as fully provided for in the lease of January 22d, 1869, to only such amount as may be left over out of thirty per cent. of the gross receipts after the payment of interest on \$25,000,000 of bonds. Does any one mean to say that "the benefits expected to result" from this arrangement equal those so definitely and unreservedly provided for in the lease of January 22d, 1869?

And yet we are told that the contracting parties had a right to so amend the lease as to

1. Absolutely prevent the establishing of a sinking fund, and so render the property of the C. C. & I. C. Company liable to sale, because of the non-fulfillment of that condition of the mortgage deeds.

2. Cancel and extinguish, in so far forth, all right and claim of an owner of Second Mortgage Bonds; and

3. Convey away the property of the stockholders, by making it liable to sale for non-fulfillment of impossible conditions, after the stockholders had, so far as the conditions of interest and sinking funds were concerned, been protected in their rights of ownership.

To contend that any directors or even a majority of stockholders had a right to so destroy the rights of other stockholders would be more than foolishness, and this talk about "benefits expected to result" from any such attempt is sheer nonsense, and only shows the propriety (to say the least of it) of insisting on the enforcement of the guarantee so fully made in the original lease.

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## "CERTAIN IRREGULARITIES."

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[*From Hassler's Financial Report, No. 197, Oct. 9, 1874.*]

The Philadelphia *Ledger*, of October 1, speaking of the "rumors" in regard to the above road, says: "Certain irregularities have been discovered in some of the second mortgage Bonds implying liability on the part of the Pennsylvania Railroad Company for their payment, which Colonel T. A. Scott, the President of the company, officially disclaims."

"Irregularities," "implying liability," are good words when properly used. It certainly was an "irregularity" for the Pennsylvania Railroad Company to allow Bonds to be outstanding for five years, having printed on them, "The within Bond is additionally secured by a lease of the road to the Pittsburgh, Cincinnati and St. Louis Railway Company. And the payment of the interest and principal of the entire series of Bonds mentioned herein is guaranteed by the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company," and *now* to profess ignorance of the whole matter.

We have copied the endorsement as printed on one of the Bonds, now lying before us, and which Mr. Scott seems to dispute, dated December 15, 1868, referred to in the lease and contract dated January 22, 1869 (Article XI., page 9,) the interest on which has been previously provided for, (Article VII., page 7,) and which (Article XVI., page 11,) "the party of the third part" (the Pennsylvania Railroad Company) "does hereby guarantee." This certainly does read as if "implying liability."

We have frequently been asked our opinion of Pennsylvania Railroad guarantees. "Irregularities," "implying liability" will be quoted hereafter in our replies to such inquiries.

## PENNSYLVANIA RAILROAD INVESTIGATION.

[*From Hassler's Financial Report, No. 213, Jan. 29, 1875.*]

**Pennsylvania Railroad Investigation.**—At the meeting of this Company held last March an Investigating Committee was appointed, who made an elaborate report, which has been published in an octavo pamphlet of 240 pages.

In view of the fact that the action of the President of that corporation in regard to the C. C. & I. C. guarantee is doing great injury to the interests of that Co.'s stockholders, we will quote a few of the "conclusions" arrived at by the Committee. They say:

"Is it wise, prudent, or just that the almost absolute control of such vast interests should be placed under the power of any one man to designate its policy, control its working, determine its growth, and regulate its finances? Yet such is the practical fact under your present organization. \* \* \*

\* \* \* The experience of the past is our best guide for the future, and errors may be made profitable by being used for wholesome warnings. Are you willing to continue such a policy? Changes must take place in time, and under an incompetent, dishonest or speculative President—which is by no means impossible—what havoc and destruction of values might be made of your property, causing deep disgrace and wide-spread suffering. \* \* \*

Some of the doings of your late President and Board of Directors are evidences of that want of careful investigation and oversight which arises from the defects of the present organization, because it is out of the question for one man to perform the labor of acquiring knowledge of all the facts, to carefully digest them, and to decide at once promptly and rightly. \* \* \*

1. That the present form of organization makes practical ciphers of the Directors, and this from no deliberate intention, but from the very necessities of the case. \* \* \*

3. The successful management of these great interests is beyond the ability of any one man; it does seem clear to your Committee that the proper time has arrived when you should carefully consider this grave and important question."



## THE LEGAL ENFORCEMENT OF THE GUARANTEE.

[From *Hassler's Financial Report*. No. 213, Jan. 29, 1875.]

The Pennsylvania Railroad and the C. C. & I. C.—The importance of a proper settlement of the questions which have arisen in regard to the “lease and contract” between these two roads—the first as guarantor of the P. C. & St. L. lessees of the railroad of the second—cannot be over-estimated. A private party cannot make a contract and vary its terms at his own pleasure for his own profit and to the injury of the rights acquired by third parties, unless he has the consent of these third parties; and now the question is, Can a Railroad Corporation act in disregard of its contract and destroy the rights of third parties acquired under it, and without their consent?

The P. C. & St. L. Railway Co. leased the C. C. & I. C. Railway on the 22d February, 1869, and the lease stated in so many words that the Pennsylvania Railroad Company guaranteed the performance on the part of the P. C. & St. L. Company, which guarantee involved the payment of interest on \$20,000,000 Bonds in case the leasing company did not pay it. Now the lessee has not paid it, and the guarantor declines to pay. It is not stated by any of its adherents that the Pennsylvania Railroad is bankrupt.

It is a simple question, but it is one involving the interests of untold amounts. Its importance must be our excuse for occupying so much space with a copy of the complaint filed by Mr. Hassler, the decision of which will, it is believed, settle the question.

The following is a copy of the bill as filed :

### SUPREME COURT OF THE STATE OF NEW YORK.

CHARLES W. HASSLER,

On behalf of the Stockholders of the Columbus, Chicago and Indiana Central Railway Company,

against

The Pennsylvania Railroad Company, The Pittsburgh, Cincinnati, and St. Louis Railway Company, The Columbus, Chicago and Indiana Central Railway Company.

*Trial to be had in the City and County of New York.*

The plaintiff, on behalf of himself and all others in like interest who may hereafter come in and contribute to the expenses of this action, complains of the defendants and alleges as follows:

The Pennsylvania Railroad Company is a body politic and corporate, created by and organized under the laws of the State of Pennsylvania; The Pittsburgh, Cincinnati and St. Louis Railway Company is a body politic and corporate, created



by and organized under the laws of the States of Pennsylvania, Ohio, Virginia, and West Virginia; The Columbus, Chicago and Indiana Central Railway Company is a body corporate, created by and organized under the laws of the States of Ohio, Illinois, and Indiana.

The plaintiff is a resident of the State of New York, and is the owner and holder of two hundred and fifty shares of stock of the Columbus, Chicago and Indiana Central Railway Company.

I. The Columbus, Chicago and Indiana Central Railway Company is now under the control of the same directors who were parties to the acts hereinafter complained of, and who controlled its affairs at the times hereinafter mentioned, and the said directors are unwilling to bring the suit in the name of the Columbus, Chicago and Indiana Central Railway Company as plaintiff, and the said company is therefore made a party defendant.

II. The corporations defendant are the owners of certain lines of railroad in the States of Pennsylvania, Ohio, Illinois, Indiana, and West Virginia.

On the 22d of January, 1869, an indenture of lease was executed by and between the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, whereby, upon the faith of the guaranty by the Pennsylvania Railroad Company of the due performance of all the covenants of said lease by the Pittsburgh, Cincinnati and St. Louis Railway Company, the Columbus, Chicago and Indiana Central Railway Company, was leased for the term of ninety-nine years to the Pittsburgh, Cincinnati and St. Louis Railway Company. The following provisions are contained in said lease:

ARTICLE VII. It is mutually covenanted and agreed that the whole of the balance of said gross annual earnings and revenues, after deducting the taxes and assessments as aforesaid, being thirty per cent. (30 per cent.) thereof, shall be, and the same are hereby, appropriated, and shall be applied to the purposes and paid by the party of the second part in the way and manner following: *First*, To the payment of the interest that may accrue after February first, Eighteen Hundred and Sixty-nine, being at the rate of seven per cent. (7 per cent.) on all the mortgage bonds of the party of the first part, to the extent of twenty millions of dollars (\$20,000,000), in accordance with their respective equities and priorities; and *Second*, To the payment of the interest upon the income bonds of the party of the first part which may hereafter be issued to the party of the second part for the purposes of construction, as hereinafter mentioned, said interest to be deposited, in ample time to meet the accruing coupons, at some Bank, Trust Company, or Agency in the city of New York, as may be agreed upon from time to time by the parties of the first and

second parts; Provided, nevertheless, that if the said thirty per cent. (30 per cent.) should not in any one year be equal to the sum required for the payment of the interest as aforesaid, then and in that event the party of the second part shall and will, at their own cost and expense, and without charge to the party of the first part, pay to said agency or agencies the amount required to pay said interest, as the same shall become due and payable.

ARTICLE VIII. In order to provide for the payment or redemption of the said twenty millions (\$20,000,000) of seven per cent. (7 per cent.) Bonds of the party of the first part, secured by mortgages, the party of the second part covenants and agrees that they will provide an annual Sinking Fund, as required of the said party of the first part by the terms and conditions of the said mortgages therefor.

ARTICLE XI. No issue of Bonds beyond the fifteen millions (\$15,000,000) of First Mortgage consolidated Bonds, and the five millions (\$5,000,000) of Second Mortgage consolidated Bonds, and the two millions (\$2,000,000) of Income Bonds hereinbefore provided for, shall be issued by the party of the first part, without the consent of the Boards of Directors of the respective parties to this lease.

ARTICLE XVI. And the party of the third part, for and in consideration of the sum of one dollar to it in hand paid by the parties of the first and second parts, the receipt whereof is hereby acknowledged, and of the benefits and advantages accruing and to accrue to it by reason of the covenants and agreements hereinbefore recited, by the said parties of the first and second parts, to be done and performed in the forming, maintaining, and operating of a continuous line of railway in connection with the road or roads of the party of the third part, does hereby guarantee to the party of the first part that the party of the second part will, in good faith, do, keep, and perform, all and singular, the matters and things which the said party of the second part have hereinbefore covenanted and agreed to do; and upon any failure or default of the said party of the second part to keep and perform any and all of its said covenants and agreements, that then the said party of the third part will, upon notice to them in writing of the kind and nature of such failure or default, do, keep, and perform the same, for and on behalf of the said party of the second part. In which event the parties of the first and second parts agree that the party of the third part shall, at its option, be entitled to all the profits and advantages which might or could accrue therefrom to the party of the second part.

The aforesaid lease, containing the above recited covenants, was duly signed, sealed, and sworn to, and delivered by the presidents of the respective parties thereto; J. Edgar Thomson executed the same on behalf of the Pennsylvania Railroad Company; his signature was attested by Edmund Smith, the secretary of said company, who deposed "that he was per-



sonally present at the execution of the foregoing indenture of lease and contract, and saw J. Edgar Thomson, Esquire, president of the said corporation, sign, seal, and deliver the same as his act and deed, and in pursuance of a resolution of the Board of Directors of said company, duly passed by order and authority of said company as the act and deed thereof."

On the 16th of February, 1869, the directors of the Pennsylvania Railroad Company made a report to the stockholders thereof at their regular annual meeting. The report contained the following words:

"The restless spirits of our rivals in the East and West have, however, rendered it necessary to make our connections with the chief trade centres of the West more perfect, and less liable in future to molestation and interruption. This has been done to a great extent through a recent lease to the Pittsburgh, Cincinnati and St. Louis Railway Company, guaranteed by this company of the lines of the Columbus, Chicago and Indiana Central Railway Company, which have direct connections with Indianapolis, St. Louis, Louisville and Chicago."

The report then proceeded to state that the lease of these lines would require additional capital, and recommended an increase of the stock of the Pennsylvania Railroad Company to be subscribed for. The meeting of stockholders of the Pennsylvania Railroad Company thereupon passed the following resolution:

"*Resolved*, That the report of the Board of Directors for the year 1868 be, and the same is hereby accepted by the stockholders, and that the Directors be requested to carry out the recommendations therein mentioned."

The said lease thereupon went into effect and operation on the first day of February, 1869. The Pittsburgh, Cincinnati and St. Louis Railway Company took possession thereunder of the lines of railroad and of the property of the Columbus, Chicago and Indiana Central Railway Company.

The Pennsylvania Railroad Company used and enjoyed all the benefits, advantages, and profits referred to in the said Lease as accruing to the Guarantor thereof. During one year the said lessee remained in possession under the Lease above described, and for the same period the said Lessee and its Guarantor derived all the benefits arising from and under the said Lease.

III. During the existence and continuance of said Lease a large number of the Bonds and obligations of the Columbus, Chicago and Indiana Central Railway Company, amounting to several millions of dollars were issued under and in pursuance of the terms of said Lease, and the said Bonds were sold to various individuals, and are now held by them in the United States and in Europe.

The said obligations known as Second Mortgage Bonds were issued by the Columbus, Chicago, and Indiana Central Railway Company under the provisions of the Lease aforesaid, to wit—That the Pittsburgh, Cincinnati and St. Louis Railway



Company would pay the interest thereon in case the thirty per cent. of gross earnings of the Columbus, Chicago and Indiana Central Railway Company did not suffice for that purpose; and also would provide a sinking fund sufficient for the redemption of the principal thereof at maturity, and more particularly the said Bonds were issued in reliance upon the covenant of the Pennsylvania Railroad Company contained in said Lease, whereby the performance of the said agreements therein made by the Pittsburgh, Cincinnati and St. Louis Railway Company were in all matters and things fully guaranteed. The said Bonds so issued were to be paid and discharged in all respects, principal and interest, by the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, and were not to be charges against the Columbus, Chicago and Indiana Central Railway Company, save as above mentioned, after the default of the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company.

IV. On the first day of February, 1870, the Presidents of the respective parties to the above described Lease, fraudulently and without authority of law or fact, assumed to enter into a so-called amended Lease, whereby the provisions and stipulations of the Lease which had been acted upon for one year previously were in great part attempted to be disregarded and set at naught.

Thereafter, and on the first day of August, 1874, the interest upon the Second Mortgage Bonds above referred to, which became due and payable on that day, was not then paid and has not been since paid by the Pittsburgh, Cincinnati and St. Louis Railway Company, or the Pennsylvania Railroad Company, though notice of said default has been given to the latter Company according to the terms of said Lease.

On the 16th day of December, 1874, a meeting of the Stockholders of the Columbus, Chicago and Indiana Central Railway was held pursuant to call in the city of New York, to determine upon a course of action in view of said default by the Pittsburgh, Cincinnati and St. Louis Railway, and the Pennsylvania Railroad Company, and at said meeting a Committee was appointed to examine the facts and circumstances under which the said amendments to the Lease were made.

The plaintiff was selected a member of said committee and did personally make an examination of the matters so referred, and on said examination discovered that the said amendments to the Lease had been procured by fraud.

It appeared from said examination that the Directors of the Columbus, Chicago and Indiana Central Railway permitted the President thereof to exercise almost uncontrolled authority over its business and over the relations of the Company to other corporations. The majority of the Directors were subservient to the directions of the President, and those who were not so subservient negligently permitted him to manage the railroad and its finances in violation of his trust and without regard to the interests of the stockholders.

Under the said circumstances of the administration of the corporate affairs, the amendments to the Lease were obtained and were secured by collusion and fraud among the officers and a majority of the Directors of the Pennsylvania Railroad Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Columbus, Chicago and Indiana Central Railway Company.

The stockholders of the Columbus, Chicago and Indiana Central Railway Company were not convened or notified in regard to the said proposed amendments to the lease of their property before the execution thereof.

The consent of the Second Mortgage Bondholders was not given to any release of the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company from their obligations to pay the interest and provide a sinking fund for the payment of the principal of said Bonds.

The sole purpose and object and the entire result proposed by said amendments was the attempted release of the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company from their covenants under the Lease.

The provision in the Lease, as above recited, binding the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company to the absolute payment of interest on twenty millions of dollars of mortgage Bonds of the Columbus, Chicago and Indiana Central Railway Company were deliberately altered without cause or reason assigned or consideration therefor, thus attempting to reduce the liability of the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company for twenty millions (\$20,000,000) of dollars of Bonds, to a pretended liability for only fifteen millions and eight hundred and twenty-one thousand (\$15,821,000) dollars of Bonds. In nearly all other respects the original Lease remained undisturbed, except in so far as it provided for the purpose of carrying out the foregoing scheme that the Columbus, Chicago and Indiana Central Railway Company should procure the holders of Bonds whose interest and principal were under said Lease charged against the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company, to exchange their securities for certain income Bonds which are binding upon and a charge against their own road, the Columbus, Chicago and Indiana Central Railway Company, and not a charge against the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company. For this agreement of the officers of the Columbus, Chicago and Indiana Central Railway Company to transfer the liabilities from the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company to their own corporation, no consideration was given to the Columbus, Chicago and Indiana Central Railway Company or its stockholders.

The officers of the Pennsylvania Railroad Company and the



Pittsburgh, Cincinnati and St. Louis Railway Company, by the use of devices, and by collusion in their dealings with the officers of the Columbus, Chicago and Indiana Central Railway Company, procured the said contract of modification of the lease, and the officers and a majority of the Directors of Columbus, Chicago and Indiana Central Railway Company, unmindful of the trust for the stockholders thereof, fraudulently entered into the said contract.

The said amendments to the lease are fraudulent and void, and of no binding effect on the Columbus, Chicago and Indiana Central Railway Company, its stockholders, and the holders of the Bonds for which the Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company are liable, as aforesaid; and the said amended lease should be set aside and declared null and inoperative by a Court of Equity.

The Directors of the Columbus, Chicago and Indiana Central Railway Company have no power or authority to give away any of the property or rights of the corporation by the aforesaid attempted amendments to said lease, and the said attempted amendments are void and of no effect.

V. The Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company are liable for, and in any event bound to pay, the interest on the fifteen million dollars of First Mortgage Bonds, and the five million dollars of Second Mortgage Bonds of the Columbus, Chicago and Indiana Central Railway Company under the terms of said lease; and in case the thirty per cent. of gross receipts of the Columbus, Chicago and Indiana Central Railway Company are insufficient for that purpose, the Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company are bound to pay said interest from their own resources.

The Columbus, Chicago and Indiana Central Railway Company having, by the lease of January 2, 1869, surrendered seventy per cent. of its gross receipts to the lessee of its road, upon the faith of the covenants above stated, is not in default upon the interest of said Bonds, or equitably bound to pay the same until the default of the Pittsburgh, Cincinnati, and St. Louis Railway Company and the Pennsylvania Railway Company in the payment of said interest.

The Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company has no right or equity to enforce by foreclosure, or in any other form, any claim which it may have against the Columbus, Chicago and Indiana Central Railway Company, by reason of owning any of the first and second mortgage bonds of said company, the payment of the interest on which was stipulated by the Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company, in the lease aforesaid.

The Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company, are bound to pro-

vide a sinking fund from their own resources of one per cent. per annum. No account of said sinking fund has ever been rendered by the Pittsburgh, Cincinnati and St. Louis Railway Company, or the Pennsylvania Railroad Company, of, or concerning said sinking fund. The plaintiff is entitled to an account of the receipts, payments and investments of the said sinking fund, so held in trust for the Columbus, Chicago and Indiana Central Railway Company by the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company, and also of the accounts of receipts and disbursements under said lease, and to a decree for the payments to said sinking fund, by said corporations last named, according to the terms of the lease, and for the payment of the overdue interest on said second mortgage bonds. Wherefore the plaintiff demands judgment against the defendants, the Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company.

I. That the said amended lease be adjudged and decreed void and of no effect, and be delivered up by the Pennsylvania Railroad Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company, to be canceled.

II. That the defendants be adjudged and decreed to account for the administration of the Trust of, and concerning the Sinking Fund provided in the lease between the Columbus, Chicago and Indiana Central Railway Company, the Pittsburgh, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company.

III. That the Pittsburgh, Cincinnati and St. Louis Railway Company and the Pennsylvania Railroad Company be adjudged and decreed to account for the receipts, revenues and proper disbursements under the lease of January 22d, 1869, and be adjudged to pay any balance requisite for the discharge of the overdue interest on Fifteen Million Dollars of First Mortgage Bonds, and Five Million Dollars of Second Mortgage Bonds of the Columbus, Chicago and Indiana Central Railway Company, which interest may be shown upon said accounting to be due and payable after the appropriation of the thirty per cent. of gross revenues.

IV. That the defendants, the Pennsylvania Railroad Company and the Pittsburgh, Cincinnati and St. Louis Railway Company, be enjoined and restrained, pending these proceedings and perpetually, from instituting any suit of foreclosure upon any bonds of the Columbus, Chicago and Indiana Central Railway Company, and which are included within the terms of the lease of January 22d, 1869, and the guaranty thereof.

V. That the plaintiff may have such other and further or different relief as may be just.

EDWARD L. ANDREWS,

*Plaintiff's Attorney,*

3 Broad St. (Drexel Building), New York.



*City and County of New York, ss. :*

Charles W. Hassler being duly sworn, says: That he has read the foregoing complaint, and he is the plaintiff therein named. That the said complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to the said matters he believes the same to be true.

CHARLES W. HASSLER.

Sworn to before me, this }  
9th day of January, 1875. }

J. D. WALLER, *Notary Public*,  
New York.

Ex-Judge Edwards Pierrepont will act as Counsel.

After the above had been sent to the printers we received the following:

*To the Editor of Hassler's Financial Report :*

DEAR SIR—The following seem to me facts, and if they are they should be known to the public and the press:

The Pennsylvania Railroad Company, in 1869, not having any route to Chicago under their control, obtained the C. C. & I. C. R. R. by lease and by guaranteeing the interest on \$15,000,000 First and \$5,000,000 Second Mortgage Bonds—\$20,000,000 in all. About one year later the Fort Wayne road was obtained, on the use of which, doubtless, there was a large profit to the lessees. The Pennsylvania Railroad Company consequently made, or endeavored to make, a second or “amended” lease, whereby they claimed to guarantee interest on only \$15,821,000 instead of on \$20,000,000 Mortgage Bonds. The interest, nevertheless, continued for years to be paid on both classes of mortgages, *i. e.*, on \$20,000,000, until last August, when apparent quibbles were assigned as cause for non-payment on the \$5,000,000 Seconds, and the claim was set up by the Pennsylvania Railroad Company that, under the “amended” lease, they were not liable.

It is not contended for one moment by any one that the Second Mortgage Bondholders gave their assent to any release of guarantee under the “amended” lease, and a vote of Directors and Stockholders certainly cannot bind the Bondholders. An innocent holder cannot thus be “gouged” by an agreement between other parties voting away *his* rights under the law, even if “certain influences or threats” were not brought to bear upon the Directors of the C. C. & I. C. to make them consent to the terms of the Pennsylvania Railroad Company. No court could uphold the claim of the Pennsylvania R. R. Co.\*

An apparent subterfuge to entangle matters further was the suit of judgment by the Pennsylvania Railroad against the C. C. & I. C. for back interest on the Second Mortgage Bonds

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\* NOTE.—And it is a question which will be settled by Mr. Hassler's suit, whether Directors can agree to an “amendment” which would destroy the Stockholders' rights even if a stock vote seem to agree to it, without, as Trustees for all, the Directors making themselves individually and personally liable.—*Ed.*

held by that company. But the tables were fairly turned upon them when they, claiming that some \$1,200,000 of these Bonds ought never to have been issued (on which they had paid themselves, or received, interest in former years) the lawyer of the C. C. & I. C. Co. asked for judgment against them for the sum received.

But the history of the case seems to be this: When the Pennsylvania Railroad Company had no route to Chicago, they made certain terms to get it, and when they obtained a *better* route, they at once sought to evade their responsibility assumed on the C. C. & I. C. But if they made a bad bargain, does that fact free them from its fulfillment. Their position they probably deemed a weak one, as for years the interest was paid, but the panic came, railroad property became discredited, and the trunk lines not seeking new connecting links, an opportunity was offered them which they were quick to take advantage of. The receipts of the road declined, or were made to decline, to an enormous percentage, even though the lessees, and it is fair to remember this, "agree" in both "leases" in the most forcible terms to operate the C. C. & I. C. railroad without any "discrimination" in favor of any other line or lines competing for the business. This clause was the protection of the C. C. & I. C. as the lessees themselves, by withdrawing the business controlled by them, could reduce the revenue needed for the interest payments, stop payment on their own holdings, and then attempting to take advantage of their own acts, claim damages as the result of their own breach of contract!

What Court would allow such a claim? Now has this not been done? Is it not public to all who have endeavored to take the "C. C. & I. C." route to Chicago or return, that the hours of leaving and arriving at termini were so inconvenient as to throw the traffic over the other route? Is it not equally well known that the road was used in great measure for the return of empty cars? Both these things have been freely stated, and I think cannot be contradicted. The question whether there was "chiseling" in rates the books would show. Even the engineers' strike, as reported by the papers last winter, was confined to *this route* of the Pennsylvania Company, thus reducing and almost stopping transportation for some weeks by the "C. C. & I. C.," but, not by the other route. Law and equity seem all to be on the side of the C. C. & I. C. Bondholders, and what the law is a decision in a parallel case just rendered in the U. S. Circuit Court in Missouri against the Atlantic and Pacific Railroad, comes opportunely to the relief of all such Bondholders.\*

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\* Note.—This important case is given in our issue of October 16, 1874, and we would refer our readers to it as bearing especially on the Pennsylvania guarantee of the C. C. & I. C. Bonds. We then said, "This seems to be another case of an endeavor to 'get out of' a contract which may bear harshly upon the guarantying party;" and the court fully sustained the plaintiff who was an owner of the guaranteed Bonds. The attempt to "rescind" the contract of lease and annul the Bondholders'



The decision covers the quibbles by which an endeavor was made to show that the C. C. & I. C. had not fulfilled certain "conditions" of which the innocent Bondholders could know nothing, and makes the guarantor liable for the endorsement of guarantee on the Bond, notwithstanding any non-fulfillment of "conditions" to which one railroad claims the other has proved recreant.

This, apparently, is the only possible way by which a confiding public can be protected, and sounds like good law. This is our case against the Pennsylvania Railroad, and the treatment looks the more iniquitous and deliberately designed to shake off the honest fulfillment of a contract, when Mr. Thomas Scott, at the meeting of the Stock and Bondholders, threatened the Stockholders with the loss of their property if they resorted to litigation! Litigation! denied them to right themselves! We may compare this to the threat "banditti."

It has struck my mind that the resolution of the Pennsylvania Railroad Directors last Spring, to observe a more "conservative policy" in railroading, has been another motive for endeavoring to shake off the C. C. & I. C. : but can the Penn. R. R. Stockholders afford thus to get their 10 per cent. dividends by breach of contracts? Our position must be to compel by law the payment of this interest, and to compel this lease (still having 94 years to run) to be faithfully observed, and in the meanwhile an outspoken press will place the credit of the Pennsylvania Railroad officers where it belongs. Perhaps if Bondholders held Texas and Pacific Railroad securities they would fare better!

I am, Sir, yours, &c.,

SECOND MORTGAGE BONDHOLDER.

"Second Mortgage Bondholder" will find food for thought in our columns of this issue.

*We mean action*, and invite all Bondholders and Stockholders to communicate with us.

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### COL. SCOTT'S LETTER.

[From *Hassler's Financial Report*, No. 198, Oct. 16, 1874.]

[COPY.]

NEW YORK, October 8, 1874.

HON. THOMAS A. SCOTT, President Penna. R. R. Co.:

DEAR SIR—My client, Mr. Charles W. Hassler, of this city, requests me to state that the numerous inquiries that he has received from his correspondents and their wish to unite for prompt and combined action, impel him to request an early reply on the subject of the guaranty of the Pennsylvania Rail-

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rights seemed to strike the learned judges as "exceedingly improper." *Query*.—Was he aware of "the standing of the parties?" Or did he know that the attempt to "rescind" was made when the present President of the Pennsylvania Railroad was also President of the Atlantic and Pacific?—*Ed.*

road Company of the Second Mortgage Bonds of the Columbus, Chicago and Indiana Central Railway company.

In case we have not received a reply to our demand on or before Oct. 13th, we will assume that the Pennsylvania Railroad Company refuses to comply therewith.

Very respectfully,

E. L. ANDREWS.

[COPY.]

PENNSYLVANIA RAILROAD COMPANY, }  
OFFICE OF THE PRESIDENT, }  
PHILADELPHIA, 9th October, 1874. }

E. L. ANDREWS, Esq., New York:

DEAR SIR—Your letter of the 8th is at hand. I am not aware that the Pennsylvania Railroad Company have guaranteed any bonds of the Col., Chicago, and Indiana Cent. R. R.; nor am I at all convinced, by the opinion you were kind enough to send me, that such, or any other guarantee exists.

The difference in views between you and the interests I represent on this question I judge cannot be reconciled by correspondence.

Very respectfully, yours,

[Signed]

THOMAS A. SCOTT, Pres.

### **Have the Stockholders of the Pennsylvania Railroad an interest in this matter?**

[*From Hassler's Financial Report, No. 200, Oct. 30, 1874.*]

The Pennsylvania Railroad Company *cannot afford* to have its good name tarnished by any further action on the part of its President looking to a repudiation of its contract in this matter, and we are fully persuaded that it is only necessary for Bondholders to *insist* upon their rights in order to obtain them. This *insisting* may have to be done through the instrumentality of the courts, but there can be only one result to any litigation—the Bondholders will receive their guaranteed interest.

And the question arises, *Can the Stockholders of the Pennsylvania Railroad Company afford to have THEIR interests trifled with by this action of their officers?*

### **THE RECEIVERSHIP.**

[*From Hassler's Financial Report, No. 215, Feb. 12, 1875.*]

C. C. & I. C.—Stockholders and Bondholders are informed that we have printed a second edition of our No. 213, and are now prepared to fill orders for copies of that number. We had printed an extra large number, but the demand has so far exceeded our expectations that we have had the forms made up again and another edition struck off.



Various rumors have been circulated within the past few days in regard to the appointment of Receivers for this road.

The facts seem to be as follows:

The trust deed of the \$15,000,000 Consolidated First Mortgage provides that a sinking fund shall be established for the ultimate payment of the principal of the Bonds issued under it. Now it is a very proper proceeding for the Trustees of those bonds to insist upon these provisions of the mortgage being carried out, and therefore looking at the matter in one light, it is a very proper proceeding for those trustees to take legal steps to enforce the establishing of the sinking fund, and no bondholder nor stockholder can object to such a proceeding. And if the C. C. & I. C. Company were the only parties against whose interests such proceedings would militate, then the second mortgage Bondholder and the stockholder might, with justice, become alarmed, and fears might arise that their Bonds and stocks would become worthless. But the Bondholders and stockholders need only to notice the following provisions of the Lease of 22d January, 1869, and their fears, if any they had, will be quieted.

The lease provides:

“ARTICLE VIII. In order to provide for the payment or redemption of the said twenty millions (\$20,000,000) of seven per cent. (7 per cent.) Bonds of the party of the first part, secured by mortgages, the *party of the second part covenants* and agrees that *they will provide* an annual Sinking Fund, as required of the said party of the first part by the terms and conditions of the said mortgages therefor. \* \* \*

“ARTICLE XVI. And the party of the third part, for and in consideration of the sum of one dollar to it in hand paid by the parties of the first and second parts, the receipt whereof is hereby acknowledged, and of the benefits and advantages accruing and to accrue to it by reason of the covenants and agreements hereinbefore recited, by the said parties of the first and second parts, to be done and performed in the forming, maintaining, and operating of a continuous line of railway in connection with the road or roads of the party of the third part, *does hereby guarantee to the party of the first part* that the party of the second part will, in good faith, do, keep, and perform, *all and singular*, the matters and things which the said party of the second part have *hereinbefore* covenanted and agreed to do; and upon *any failure* or default of the said party of the second part to keep and perform any and all of its said covenants and agreements, that then the said party of the *third part will*, upon notice to them in writing of the kind and nature of such failure or default, *do, keep, and perform the same*, for and on behalf of the said party of the second part.”

If these plain words mean any thing they mean that the Pennsylvania Railroad Company must provide the sinking fund if the Pittsburg, Cincinnati and St. Louis does not. Now the Pennsylvania Railroad Company is able, we suppose,

to provide the sinking fund, and, *therefore*, we do not see that bondholders or stockholders need have any fears of the appointment of the Trustees of the First Mortgage Bonds as Receivers, especially as, when appointing them, Judge Drummond particularly provided that they are "not to interfere with" the management of the road by the lessees, but that they are to collect from the P., C. & St. L., or "its guarantor," the Pennsylvania, the rent, and apply it to the payments of the debts of the C. C. & I. C.

One of the prayers in Mr. Hassler's complaint, as published in our No. 213, is as follows:

"II. That the defendants be adjudged and decreed to account for the administration of the Trust of, and concerning the Sinking Fund provided in the lease between the Columbus, Chicago and Indiana Central Railway Company, the Pittsburg, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company."

Now, then, if the Receivers will collect from the P. C. & St. L., or "its guarantor" the Pennsylvania Railroad, the sums called for by the terms of the lease under which they are lessee and guarantor nothing more can be desired by Bondholder or Stockholder, and one of the prayers of Mr. Hassler's complaint will be answered in a very satisfactory manner.

Upon the petition of the Pennsylvania Railroad Company Mr. Hassler's suit has been transferred to the United States Circuit Court for the Southern District of New York, and will come up for argument in due course.

We are well pleased with this removal of the case, as it will enable the obtaining of a final decision by the Supreme Court of the United States, if an appeal should be taken by either party. And for our part we should be glad to have it appealed in order that the chief judicial authority of our nation may again record its decision that a contract is inviolable *even* when entered into between railroad companies.

If any one who thinks the "amended lease and contract" is the one by which all parties are still bound as to interest, sinking fund, etc., considers that the Pennsylvania Railroad is bound only by its terms—which require them to pay into the sinking fund only if 30 per cent. of the gross receipts are more than equal the interest payments on—notice the amount—\$25,000,000 of Bonds, and not otherwise—allow us to ask such an one what becomes of the rights of an owner of the first mortgage Bonds who bought them because of the sinking fund provided for by Article VIII., and because of the guarantee of the Pennsylvania Railroad as given in Article XVI. to both interest and sinking fund, and which article the President of the C. C. & I. C., when publishing the "Amended Lease," January 17, 1871, says, "is unaffected by the amended lease." The question is, and it recurs continually in this matter, Can the rights of outside parties, who purchased in good faith, be destroyed by the subsequent changing, or attempted changing of the contract by the contracting parties? All reason is against



an affirmative answer, and were we to quote the decisions of the courts to the same effect. we would weary our readers.

In our next issue we will explain the manner in which the absolute guarantee of the Sinking Fund on \$20,000,000 of Bonds was attempted to be reduced to a limited guarantee of a sinking fund on \$15,821,000 of Bonds, and that, too, only after 30 per cent. of the gross receipts should exceed the interest payments required on \$25,000,000 of Bonds.

It will be seen that the First Mortgage Bondholders are not uninterested parties to Mr. Hassler's suit for the enforcement of the terms of the original lease and for the cancellation of the so-called and pretended amendment thereto.

We have received communications either in person or by mail, from hundreds of stock and bondholders, and will keep them advised of the progress of events.

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